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OGC 65-4026

26 Oct. 65

**MEMORANDUM FOR: Director of Personnel**

**SUBJECT: Domestic Qualifying Service**

**REFERENCE: OGC/LC Memorandum for Director of Personnel,  
dated 13 October 1965, Same Subject**

1. Reference memorandum was an initial effort to shed some light on whether certain domestic service can be considered as "qualifying service" under the CIA Retirement Act of 1964. This memorandum contains additional information on this subject.

2. House Debate, (Congressional Record, 30 October 1963, page 19600) When the Retirement Act was considered by the House of Representatives on 30 October 1963, Mr. Rivers proposed an amendment "...to establish legislative criteria by which the Agency would determine those employees who would be coming participants in this system." This amendment was adopted and became the first sentence of Section 203 as follows:

"The Director may designate from time to time such Agency officers and employees whose duties are determined by the Director to be (i) in support of Agency activities abroad hazardous to life or health or (ii) so specialized because of security requirements as to be clearly distinguishable from normal government employment, hereafter referred to as participants, who shall be entitled to the benefits of the system."

3. Rivers' Amendment, In connection with the amendment, Mr. Rivers made several clarifying and supporting statements. These statements carry more than normal weight in determining the meaning of the amendment because of the admittedly unprecise language used.

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Mr. Rivers:

(A) "It was also developed in the hearings, and with actual cases as examples furnished in executive sessions, that career employees whose duties are so specialized that they are placed at an unusual disadvantage when required to seek other employment would also be covered by this system.

(B) "In certain phases of the Agency's activities there are requirements for unusual specialties requiring long years of arduous training for which skills there could be no utilization in normal employment pursuits.

(C) "We learned of certain situations where, through no fault of the employee, his skills and he himself, became excess to the needs of the Agency or for certain reasons he could no longer be utilized effectively by the Agency. These are the people who will be covered--not the clerk, analyst, or researcher who spends his career in Washington."

Mr. Rivers also explained that his amendment, in furnishing statutory guidelines to the Director, must be written "...without at the same time imposing undue rigidity (on the Director)..." in the selection of participants. Mr. Rivers went on to say that the language is "...satisfactory to those members with whom I have consulted and is also agreeable to other members of the Armed Services Committee with whom I have consulted."

4. Opponents' Understanding. It was clear even to the opponents of the Rivers' amendment that domestic service could be included as qualifying service. While no objection to domestic coverage was raised, Mr. Gross proposed a substitute amendment to cover domestic service only if it were hazardous to life or health, as follows:

"The Director may designate from time to time such agencies, officers, and employees whose duties are determined by the Director to be in support of agency activities abroad or in this country that are hazardous to life or health."

Mr. Gross said that the Rivers' amendment would "...leave the Director of CIA the full determination of normal Government employment..." and that the language "so specialized because of security requirements..." would cover anyone employed by CIA. The rejoinder to Mr. Gross was made by

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Mr. Bates, ranking minority member of the Armed Services Committee and the CIA Subcommittee, who said that CIA "... spelled these things out (defining unusual types of individuals who would be covered by the system) in detail not only with reference to those engaged in hazardous work but also engaged in fields so specialized that they were very difficult to obtain." In response to a query to spell out "specialized fields," Mr. Bates said that "the answer to the question... would impair the national security."

5. Jones' Amendment. While the House agreed that precise language could not be supplied without unduly impairing either the national security or the Director's flexibility in determining who was to be covered by the system, the House wanted to be assured that their Armed Services Committee would police CIA in its application of the general statutory criteria just approved. In this connection, an amendment by Mr. Jones was adopted, without debate, which required that the rules and regulations issued by the Director to establish the system be approved by the Chairman and ranking minority members of the Armed Services Committees of both Houses before they became effective. The President, in signing the Bill on 14 October 1964, expressed his reservation that the Jones' amendment attempts to confer executive powers on the members of the legislative branch, but recognized that its existence was in large part due "... to the fact that the anticipated coverage... which was explained to the committees, cannot for security reasons be set forth in the bill."

6. CIA Retirement Regulations. As you know, what is now HR 20-50 was approved by the Chairman and ranking minority members of the Senate and House Armed Services Committee in conformance with the Jones' amendment. HR 20-50(b)(11) contains a definition of qualifying service which is more detailed than the statutory criteria of the Rivers' amendment. In view of the circumstances under which the Jones' amendment was adopted and the legislative intent developed on the question of criteria, the statements on qualifying service set forth in HR20-50(b)(11) are considered for all practical and legal purposes, to be incorporated in the CIA Retirement Act of 1964.

7. Conclusions. There is no question that domestic service, under certain circumstances, may be considered qualifying service under the CIA Retirement System. Support for this conclusion is found in the language of

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the Rivers' amendment, in the floor discussion when it was adopted, and in HR 20-50(b)(11).

8. It is hoped that the above will be helpful in answering some of the questions relating to qualifying service for other than overseas assignments. We would welcome the opportunity to discuss with you further how the term "qualifying service" as defined in Agency regulations may be applied to specific cases.

JOHN S. WARNER  
Legislative Counsel

cc: C/RI

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<b>Remarks:</b>  <p>Attached are pages of the <u>Congressional Record</u> making the "public" (overt) record of the legislative history behind the statutory criteria for participation. It is interesting that Gross's amendment which was defeated clearly covered activities abroad or in this country that are hazardous to life or health. Other underlined sections in the record show that the second "so specialized" criteria could apply to domestic service.</p> <p>Note--Next Retirement Board meeting - 26 October.</p>			
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